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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/935,335	08/21/2001	William John Zelinski JR.	TZIN-005	8129

7590
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EXAMINER

NGUYEN, PHONG H

ART UNIT PAPER NUMBER

3724

DATE MAILED: 11/20/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/935,335

Applicant(s)

ZELINSKI ET AL.

Examiner

Phong H Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

1. The Terminal Disclaimer is acknowledged. Double patenting rejection is withdrawn.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-3, 5-12 and 14-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maroney (5,528,967) in view of Miles et al. (3,096,801).

Regarding claims 1, 5, 9 and 15, Maroney teaches a method for cutting grown agricultural products comprising the steps of conveying the to be cut grown agricultural products to the water jet cutting station, supplying a chamber 30 with a water jet passing across, moving the grown agricultural products through water jet, and cutting the grown agricultural products with water jet. See Fig. 1, and col. 3, line 57 - col. 4, line 53. Maroney does not teach sizing the potatoes before conveying to the cutting station. Miles et al. teach sorter rollers 44 and 46 to size seed potatoes before cutting. See Fig. 2. It would have been obvious to further modify Maroney's cutting station by adding a sorter as taught by Miles et al. to size seed potatoes before they enter the cutting station since the seed potato holder at the cutting station can held certain potato's size.

4. Claims 1, 9, 2, 3, 6, 7, 10, 11, 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maroney (5,528,967) in view of Miles

et al. (3,096,801) as applied to claims above, and further in view of Flaming (5,269,211).

Regarding claims 2, 6, 11 and 17, Maroney does not teach a discharge tube to collect spent water. Flaming teaches a discharge tube 276 to collect spent water. See Fig. 4. Therefore, it would have been obvious to incorporate a discharge tube to the water jet system to collect spent water as taught by Flaming.

Regarding claims 3, 7, 12 and 18, Maroney discloses discharge tubes 62. See Fig. 1.

Regarding claims 14 and 20, Maroney teaches that the pressure of the water jet is 40,000psi but not 10,000 psi as claimed. However, adjusting the pressure of the water jet to cut a workpiece is routine skill in the art.

5. Claims 4, 8, 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Maroney in view of Miles et al. and Flaming, as applied to claims above, and further in view of Mirabello (6,125,729). The combination of Maroney, Miles et al. and Flaming does not disclose how to orient water jet nozzles to make multiple cuts on the seed potatoes. Mirabello teaches using a plurality of water jets 26, 36 and 38 to make multiple cuts on a workpiece. See Figs. 1 and 3. Therefore, it would have been obvious to further modify the combination of Maroney, Flaming and Miles et al. by applying a plurality of water jets to cut a workpiece as taught by Mirabello to cut a seed potato into smaller pieces in less time.

Response to Arguments

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6. Applicant's arguments filed on 08/15/2003 have been fully considered but they are not persuasive.

Applicant argues:

-Maroney does not teach sizing of the to be cut product. Element 138 is merely a separator.

-Maroney does not teach a discharge tube for collecting spent water and a chamber.

-It is not obvious to combine Maroney and Miles et al.

-It is not obvious to combine Maroney and Draper et al.

The Examiner agrees that element 138 is merely a separator and Maroney does not teach a discharge tube for collecting spent water. Accordingly, the 35 U.S.C 102 rejection is withdrawn. The newly cited Flaming patent teaches a discharge tube for collecting spent water to rebut Applicant's argument on this and is necessitated by Applicant's amendment of the claims.

The Examiner respectfully disagrees that Maroney does not teach a chamber. The chamber 30 is best seen in Fig. 3.

The Examiner respectfully disagrees that it is not obvious to combine Maroney and Miles et al. Maroney does not teach sizing potatoes before conveying them to the cutting station. Miles et al. teach sizing potatoes before conveying them to the cutting station. It would have been obvious to incorporate the sizing step as taught by Miles since an oversized potatoes will stop the flow of other potatoes at the end of the separator 138.

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The newly cited Mirabello patent teaches/arrangement of multiple water jets to rebut Applicant's arguments on this.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Smith (1,758,587) teaches a machine for cutting seed potatoes of general interest.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phong H Nguyen whose telephone number is 703-305-4989. The examiner can normally be reached on Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on 703-308-1082. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9302.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

PN:

pn

November 6, 2003

AS

Allan N. Shoap
Supervisory Patent Examiner
Group 3700